

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
WESTERN DIVISION**

TRACIE LYNN NORRIS

PLAINTIFF

VS.

CIVIL ACTION NO. 3:08cv118-M-S

**TUPELO PCH, LLC d/b/a
MAGNOLIA MANOR AT TUPELO**

DEFENDANT

ORDER COMPELLING WITNESS TO APPEAR FOR DEPOSITION

Before the court is the plaintiff's motion (# 40) to compel a witness to appear for a deposition. The defendant, Tupelo PCH, LLC, has joined in the motion.

On August 28, 2009, Janice Humphreys was personally served with a subpoena to appear for a deposition at the office of plaintiff's counsel in Tupelo, Mississippi on September 18, 2009. The proof of service (# 29) indicates that Ms. Humphreys was served at her address in Vina, Alabama. Thereafter, Ms. Humphreys requested that her deposition be rescheduled. On October 7 and 8, plaintiff's counsel left voice mail messages for Ms. Humphreys, notifying her that the deposition had been rescheduled for November 2. On October 8, Ms. Humphreys called plaintiff's counsel and agreed to appear for the deposition. On November 2, however, Ms. Humphreys notified plaintiff's counsel that she could not attend the deposition due to illness. On November 10, Ms. Humphreys was notified that her deposition had been rescheduled for December 9. And, though plaintiff's counsel contacted Ms. Humphreys with reminders on two occasions prior to her scheduled deposition, she failed to appear.

The court "may hold in contempt any person who, having been served, fails without adequate

excuse to obey” a subpoena. FED.R.CIV.P. 45(e). Accordingly, it is

ORDERED:

1. That plaintiff’s counsel shall reissue a subpoena and notice of deposition for the witness’s appearance and serve the same **along with a copy of this order** in accordance with Rule 45 of the *Federal Rules of Civil Procedure*.

2. **That should the witness fail to comply with said subpoena “without adequate excuse,” she will be held in contempt of this court.**

This the 22nd day of January, 2010.

/s/ David A. Sanders
UNITED STATES MAGISTRATE JUDGE